

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DURRELL ANTHONY PUCKETT,

Plaintiff,

v.

BARAONA, *et al.*,

Defendants.

Case No. 1:21-cv-01448-KES-BAM (PC)

ORDER DENYING PLAINTIFF'S MOTION
FOR APPOINTMENT OF COUNSEL

(ECF No. 144)

Plaintiff Durrell Anthony Puckett ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's second amended complaint against: (1) Defendants Baraona, Burnitzki, Leos, Hernandez, and Diaz for excessive force in violation of the Eighth Amendment; (2) Defendant Leos for sexual assault in violation of the Eighth Amendment; and (3) Defendants A. Ruiz, E. Ruiz, Meier, Gutierrez, Allison (Cronister), and Price for failure to protect in violation of the Eighth Amendment.

This case is set for a pretrial conference on January 26, 2026, and for trial on March 10, 2026, before District Judge Kirk E. Sherriff.

Currently before the Court is Plaintiff's renewed motion for appointment of counsel, filed October 9, 2025. (ECF No. 144.) Plaintiff argues that due to his mental health treatment and health at this time, his doctors are suspending all appointments, including some legal. Plaintiff

1 therefore requests voluntary counsel in this action. (*Id.*) Attached to his motion is a California
2 Health Care Facility memorandum dated 9/15/2025, with a subject line stating, “EXCEPTIONAL
3 CIRCUMSTANCE-SUSPENSION OF TIME CONSTRAINTS: RVRS # 7643582, 7654164,
4 INCARCERATED PERSON PUCKETT, G05549.” (*Id.*, Ex. A.) The memorandum indicates
5 that Plaintiff has been reviewed for Serious Rules Violation Repots received from California
6 Health Care Facility (CHCF), Facility E. He was assessed as a Mental Health Crisis Bed inmate
7 on September 14, 2025. His placement is “a significant Higher Level of Care for his mental
8 health concerns.” (*Id.*) Due to his placement “in a Higher Level of Care and Treatment above
9 his Level of Care in which was designated when he committed the offenses documented in the
10 RVRS, his Time Constraints are suspended.” (*Id.*) The memorandum further indicates that
11 “[u]pon his return to a Lower Level of Care . . . the Suspension of the Time Constraints in these
12 RVRS will be automatically reinstated.” (*Id.*) The memorandum further explains that exceptional
13 circumstances “means circumstances beyond the control of the department of the inmate that
14 prevent the inmate . . . from participating in the disciplinary hearing within established time
15 limitations. Examples of this as applied to an inmate would include a serious temporary mental
16 or physical impairment verified in writing by a licensed clinical social work, licensed
17 psychologist, psychiatrist, or physician.” (*Id.*) The memorandum is signed by J. Acolatse, Ph.D.,
18 Sr. Psychologist, Supervisor, California Health Care Facility. (*Id.*)

19 As with his prior request for appointment of counsel, Plaintiff is reminded that he does not
20 have a constitutional right to appointed counsel in this action, *Rand v. Rowland*, 113 F.3d 1520,
21 1525 (9th Cir. 1997), *rev’d in part on other grounds*, 154 F.3d 952, 954 n.1 (9th Cir. 1998), and
22 the court cannot require an attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1).
23 *Mallard v. U.S. Dist. Court for the S. Dist. of Iowa*, 490 U.S. 296, 298 (1989). However, in
24 certain exceptional circumstances the court may request the voluntary assistance of counsel
25 pursuant to section 1915(e)(1). *Rand*, 113 F.3d at 1525.

26 Without a reasonable method of securing and compensating counsel, the Court will seek
27 volunteer counsel only in the most serious and exceptional cases. In determining whether
28 “exceptional circumstances exist, a district court must evaluate both the likelihood of success on

1 the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the
2 complexity of the legal issues involved.” *Id.* (internal quotation marks and citations omitted).

3 The Court has considered Plaintiff’s request, but does not find the required exceptional
4 circumstances. Even if it is assumed that Plaintiff has made serious allegations which, if proved,
5 would entitle him to relief, his case is not exceptional. This Court is faced with similar cases filed
6 almost daily by prisoners alleging that they have suffered serious constitutional violations at the
7 hands of defendant correctional officers. These plaintiffs also must litigate their cases without the
8 assistance of counsel.

9 Furthermore, at this stage in the proceedings, the Court cannot make a determination that
10 Plaintiff is likely to succeed on the merits. Although Plaintiff’s complaint was found to state a
11 cognizable claim, this does not mean there is a likelihood of success on the merits. Finally, based
12 on a review of the record in this case, the Court does not find that Plaintiff cannot adequately
13 articulate his claims. The Court notes that Plaintiff previously reported placement in a crisis bed
14 (*see* ECF No. 126), but that has not prevented him from continuing to litigate this action or from
15 adequately articulating his claims. Additionally, there are no hearings or other court appearances
16 scheduled until January 2026.

17 Based on the foregoing, Plaintiff’s motion for the appointment of counsel, (ECF No. 144),
18 is DENIED without prejudice.

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20 IT IS SO ORDERED.

21 Dated: October 10, 2025

/s/ Barbara A. McAuliffe
22 UNITED STATES MAGISTRATE JUDGE
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